

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P.(T) No. 3408 of 2024**

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M.N. Ghosh & Sons, a partnership firm, having its registered office at Birsa Nagar, Gua, P.O. & P.S. Birsanagar, District-East Singhbhum, Town - Jamshedpur, PIN 833213, through its partner, Sarad Kumar Sahu, aged about 53 years, son of Late Aswasthama Sahu, resident of Birsa Nagar, Gua, P.O. & P.S. Birsanagar, District-East Singhbhum, Town - Gua PIN-833213, Jharkhand. ... .. **Petitioner(s)**

**Versus**

1. Principal Commissioner, Central Goods & Services Tax & Central Excise, Jamshedpur, having its office at South Park, Bistupur, P.O. & P.S. Bistupur, District-East Singhbhum, Town-Jamshedpur (Jharkhand), PIN-831001.

2. Commissioner (Appeals), Central Goods & Services Tax & Central Excise having its office at 2<sup>nd</sup> & 3<sup>rd</sup> Floor, Grand Emerald Building, between Road No. 1 & 2, Ashok Nagar, P.O. Ashok Nagar & P.S. Argora, District - Ranchi (Jharkhand), PIN-834002.

3. Joint Commissioner (Appeals), Central Goods & Services Tax & Central Excise having its office at 2<sup>nd</sup> & 3<sup>rd</sup> Floor, Grand Emerald Building, between Road No. 1 & 2, Ashok Nagar, P.O. Ashok Nagar & P.S. Argora, District - Ranchi (Jharkhand), PIN -834002.

4. Superintendent, Central Goods & Services Tax & Central Excise, Chaibasa Rural Range, Division-I, Jamshedpur, having its office at South Park, Bistupur, P.O. & P.S. Bistupur, District -East Singhbhum, Town - Jamshedpur (Jharkhand), PIN-831001.

... .. **Respondent(s)**

**CORAM: HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Petitioner : Mr. M. S. Mittal, Sr. Advocate  
For the Respondents : Mr. P. A. S. Pati, Advocate

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**JUDGMENT**

**CAV On 03/04/2025**

**Pronounced On 25/04/2025**

**Per Deepak Roshan, J.**

The instant writ application has been preferred by the petitioner praying for the following reliefs:

*“(i) Certiorari for quashing of appellate order dated 23.11.2023 (Ann-9/ Pg. 51)*

*passed by Joint Commissioner (Appeals), CGST & CX (Respondent No. 3) whereby appeal filed by the petitioner has been dismissed on ground of it being time barred.*

*(ii) Certiorari for quashing of order dated 8.7.2022 (Ann-3/Pg. 29) passed by Superintendent, CGST & CX, Chaibasa Rural Range, Division-I, Jamshedpur (Respondent No. 4) by which registration of the petitioner has been cancelled under Section 29(2)(C) of the Central Goods and Services Tax Act, 2017 ("CGST Act"), i.e., for failure to furnish returns for six months.*

*(iii) Mandamus directing the respondents to revoke the cancellation of the petitioner's registration."*

**2.** The brief facts of the case as it appears from the pleadings are that the petitioner is a partnership firm which carried on the business of civil construction work and labour supply. Upon advent of GST regime, the Petitioner obtained registration under the CGST Act, with its GSTIN being 20ABMFM1797K1ZX.

A notice was issued to the petitioner in Form GST REG-17/31 requiring the petitioner to show-cause as to why its registration ought not to be cancelled for failure to file returns for a continuous period of six months. The petitioner was directed to appear before 4<sup>th</sup> Respondent on 03.02.2022 and informed that its registration had been suspended with effect from 28.01.2022. Thereafter, registration of the petitioner-Firm was cancelled by the 4<sup>th</sup> Respondent with effect from 28.02.2022.

The petitioner was left with no option but to file an appeal under Section 107 of the CGST Act which was registered as Appeal No. 155/CGST/JSR/2023. The appeal of the Petitioner was dismissed on the ground of time barred as prescribed under Section 107 of the CGST Act.

**3.** Mr. M. S. Mittal, Ld. Sr. Counsel representing the Petitioner submits that one Mr. Sanjay Ghosh, active partner of the petitioner-Firm used to look after its day-to-day activities. However, due to severe health issues he could not furnish reply to the show-cause notice in time or appear before the 4<sup>th</sup> Respondent. He further submits that though the order states that Petitioner has allegedly submitted a reply on 08.02.2022, which it did not, the reason for cancellation has been stated as "not responding in the matter."

He submits that Petitioner's registration was cancelled from a retrospective date without any reason and as per Rule 23 of the CGST Rules, no application for revocation, where cancellation has been done on account of non-filing of returns, can be filed unless such returns have been filed along with interest and late fee.

He further submits that due to extreme financial crisis, the return for February 2022 could be furnished on 19.09.2023, even though all previous returns were filed much before. Therefore, the Petitioner was precluded from filing the revocation application within the specified time limit.

4. Mr. P. A. S. Pati, learned counsel for the revenue submits that there is no error in the impugned order and this Court in catena of judgments has held that limitation cannot be condoned by the appellate authority beyond the period what has already been stipulated in Section 107 of the CGST Act. As such, he submits that the instant writ application be dismissed.

5. Having heard learned counsel for the parties and after going through the documents available on record and the impugned order, it is crystal clear that the impugned order for cancellation of registration with effect from 28.02.2022 under Section 29(2)(c) of the CGST Act, 2017 was issued on 08.07.2022 and the Petitioner had filed an appeal under Section 107 of the CGST Act, which is the appellate provision on 29.09.2023 through online and hard copy of the same was submitted in the office of the appellate authority on 06.10.2023; as such, after calculating the entire period, it appears that the appeal has been filed after one year and three months beyond the normal period of filing of appeal as prescribed under Section 107 (1) of the CGST Act, 2017.

6. Section 107 of the CGST Act, 2017 stipulates the procedure for filing appeal before the appellate authority which reads as under:

*“Appeals to Appellate Authority:*

*(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by*

*an adjudicating authority may Appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.*

(2) .....

(3) .....

(4) *The Appellate Authority may, if he is satisfied that the Appellant was prevented by sufficient cause from presenting the Appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month."*

....."

7. On plain reading of Section 107 makes the position crystal clear that the appellate authority has no power to allow an appeal to be presented beyond the period of one month for filing of appeal. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to one month after the expiry of three months which is the normal period for preferring appeal.

8. In "***Singh Enterprises v. Commissioner of Central Excise, Jamshedpur***"<sup>1</sup>, the Hon'ble Apex Court considered a case, wherein, the Commissioner dismissed the appeal on the ground that it was time barred and beyond the period of 30 days from the expiry of period of 60 days, prescribed for filling the statutory appeal. The High Court dismissed the writ petition. Arguments were advanced before the Hon'ble Supreme Court that even though the Commissioner has no power to condone the delay, in exercise of the powers, under Article 226 of the Constitution of India, yet the High Court, can condone the delay, and such power is untrammelled by any statutory provision. Rejecting the above contention, at Paragraph 8, the Hon'ble Apex Court held as follows:

*"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal*

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<sup>1</sup> (2008) 3 SCC 70

*within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."*

**9.** We find that the order of cancellation of registration of the Petitioner was passed on 08.07.2022, accordingly three months period for filling appeal in this case is up to 07.10.2022 without application for condonation of delay. But appeal against the said order was filed on 29.09.2023 through online, after the normal period of three months within which any appeal under Section 107 of the Act is required to be filed.

Even after considering the condonation request of the appellant, for further granting extension of one month as per Section 107 (4) of the CGST Act, 2017, the time limit for filling of the appeal in this way is up to 07.11.2022 only. But the appeal against the order of cancellation of registration of the petitioner was filed on 29.09.2023 through online.

**10.** Thus, we are having no hesitation in holding that the Petitioner-Firm is not entitled for any relief on the ground of delay and laches coupled with the fact of being lethargic in approach; inasmuch as, on the one hand, the petitioner did not file return regularly and thus has not complied with GST REG-17/31 issued to him in any manner; and on the other hand, the appellant filed appeal after delay of more than one year and three months which is admittedly beyond the period of limitation as per the Act.

**11.** Having regard to the aforesaid facts and circumstances, neither there is any perversity in the order of cancellation of GST registration; nor there is any necessity for interference with the appellate order, inasmuch as, the same has been filed beyond the statutory period of limitation. Though Mr. Mittal, Ld. Sr. Counsel had tried to draw

attention of this Court towards the merits of the case but we are not going on merits of the case for the sole reason that the appeal filed before the appellate authority was beyond the statutory period.

**12.** Accordingly, the instant writ application is dismissed being devoid of any merit. However, there shall be no order to cost. Pending I.As, if any, also stand disposed of.

**(M. S. Ramachandra Rao, C.J.)**

**(Deepak Roshan, J.)**

Amit  
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